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C. R. Bard, Inc. and
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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

IN RE: Bard IVC Filters Products Liability
Litigation,

This Document Relates to:

Debra Tinlin, et al. v. C. R. Bard, Inc., et al.
CV-16-00263-PHX-DGC

No. 2:15-MD-02641-DGC

**DEFENDANTS' RESPONSE TO
PLAINTIFFS' MOTION IN
LIMINE NO. 3 TO PRECLUDE
EVIDENCE OF UNRELATED
MEDICAL CONDITIONS**

(Assigned to the Honorable David G.
Campbell)

(Oral Argument Requested)

1 The medical conditions listed in Mrs. Tinlin's Motion have symptoms that overlap
 2 with her alleged damages, and therefore are relevant. And Bard can argue alternative
 3 causes of alleged injuries to "weaken" those claims of injuries even "with medical proof
 4 couched in terms of possibilities." *Felde v. Kohnke*, 184 N.W.2d 433, 441 (Wis. 1971).

5 Graves' Disease, Surgical Resection of Thyroid Gland, and Hypothyroidism: Mrs.
 6 Tinlin alleges future cardiac arrhythmias and cardiac failure. (Ex. A, Muehrcke Rule 26
 7 Rep., at 8.) These future cardiac risks can also be explained, in whole or in part, by Mrs.
 8 Tinlin's long-standing thyroid issues. Mrs. Tinlin was diagnosed with Graves' Disease,
 9 which causes an overactive thyroid. Her thyroid then was radiated, and she has since had
 10 to regulate her thyroid hormones with medication. As early as May 2005, through the
 11 most recent records in March 2019, Mrs. Tinlin is reported to have hypothyroidism. (Ex.
 12 B, Med. Recs., TINLIND_SMHMC_MDR00070-71, May 4, 2005; TINLIND_AHCAR_
 13 MDR02325-26, Mar. 7, 2019. (Records arranged alphabetically by bates number).)
 14 Hypothyroidism "has profound effects on cardiac function that can impact cardiac
 15 contractility, vascular resistance, blood pressure, and heart rhythm," as well as heart
 16 failure and arrhythmia. (See Ex. C, Udovcic, *Hypothyroidism and the Heart*, 13 Methodist
 17 Debakey Cardiovascular J. 55, 55, 56 (2017).)

18 Sjogren's Syndrome: Mrs. Tinlin allegedly developed "a severely weakened
 19 trachea" as a result of surgeries due to the Recovery Filter. (Pls. Resp. Br. (Doc. 15694),
 20 at 2.) "As a result, [Mrs. Tinlin] can no longer wear her breathing device for sleep apnea .
 21 . . causing severe sleep deprivation. . . . [T]o this day, laying on her back causes her to
 22 choke, gag, and cough" (*Id.*) These alleged damages can also be explained by Mrs.
 23 Tinlin's course with Sjogren's Syndrome. Sjogren's Syndrome is an autoimmune disease
 24 the causes symptoms of fatigue, chronic pain, and dry mouth, among other issues. (See
 25 Sjogren's Syndrome Foundation, at <https://www.sjogrens.org/home/about-sjogrens>.) For
 26 example, in March 2018, Mrs. Tinlin underwent a laryngoscopy after presenting with
 27 difficulty swallowing, dry mouth, and thick mucus in her throat. She reported that "she
 28 wakes herself up choking on secretions multiple times per night. This occurs every 1-2

1 hours per night and only occurs when she's sleeping. . . . Patient admits . . . pain with
 2 swallowing.” (Ex. B, TINLIND_ BAYCC_MDR000214, Mar. 2, 2018.) The diagnosis
 3 after the laryngology included: “I think her dry mouth and thick mucus she is
 4 experiencing is multifactorial with contributions from her Sjogren's syndrome, GERD,
 5 and side effects of medications.” (*Id.* at TINLIND_BAYCC_MDR00222.)

6 Hypertension: As noted above, Mrs. Tinlin alleges that she is at risk of future
 7 cardiac complications. This prognosis can also be explained by Mrs. Tinlin's long-
 8 standing hypertension. The U.S. Department of Health and Human Services, National
 9 Heart, Lung, and Blood Institute explains that hypertension can cause heart attack, heart
 10 failure, and peripheral artery disease. (NIH, *High Blood Pressure*, at
 11 <https://www.nhlbi.nih.gov/health-topics/high-blood-pressure>.) Mrs. Tinlin has had
 12 hypertension at least as early as August 2005 (“BP 172/96”), which was untreated. (Ex. B,
 13 Med. Recs., TINLIND_PAHC_MDR01292-93, Aug. 6, 2005.) As recently as December
 14 2018, her medical records continue to describe Mrs. Tinlin's ongoing hypertension. (*Id.* at
 15 TINLIND_ABCG_MDR01084-85 (“Cardiovascular positive for hypertension . . .”).)

16 Uterine and Rectal Prolapse: Mrs. Tinlin alleges that the Recovery Filter's risks
 17 outweighed its benefits for her. (Ex. A, Muehrcke Rule 26 Rep., at 8.) A large portion of
 18 the benefit that she received from the Recovery Filter, however, was not just immediately
 19 after it was placed while she had a deep venous thrombosis. Rather, over the years, Mrs.
 20 Tinlin needed to stop treatment with anticoagulation for varying periods of time so that
 21 she could undergo medical procedures, including multiple biopsies (2005, 2015, 2017),
 22 hysterectomy for symptomatic uterine prolapse (2005), epidural injections (2006) possible
 23 tracheostomy (2010), bilateral nerve blocks (2010, 2014, 2015), rectosigmoid resection
 24 and rectopexy for rectal prolapse (2012), and parotidectomy (2014). Because of Mrs.
 25 Tinlin's ongoing need for protection against pulmonary embolism, the Recovery Filter
 26 protected her from any potential pulmonary embolism during these times. Bard agrees
 27 that it need not divulge the specific reasons that Mrs. Tinlin needed to temporarily stop
 28 taking anticoagulants, as long as it can offer evidence that she needed do so multiple times

over the years for conditions unrelated to this case.

Fibromyalgia and Rheumatoid Arthritis: Mrs. Tinlin alleges that she “has suffered significant . . . back pain from her failed Bard Recovery filter.” (Ex. A, Muehrcke Rule 26 Rep., at 8.) Her back pain can also be explained by her long-standing fibromyalgia and arthritis. Chronic low back pain is common among patients with fibromyalgia. (*See* Ex. D, Yagci, *Fibromyalgia Syndrome in Patients with Chronic Low Back Pain*, 25 Archives of Rheumatology 37 (2010).) Likewise, rheumatoid arthritis is associated with low back pain. (*See* Ex. E, Miura, *Prevalence of and factors associated with dysfunctional low back pain in patients with rheumatoid arthritis*, Eur. Spine J (Epub.) (Mar. 8, 2019).) Mrs. Tinlin’s physicians frequently associated her back pain with both fibromyalgia and arthritis. (*See, e.g.*, Ex. B, Med. Recs. at TINLIND_BAYCAREC _MDR00157-164 (“arthritis low back”), 373-74 (“multiple musculoskeletal pain issues . . . fibromyalgia syndrome”), 377-78 (“low back pain . . . recently told she has fibromyalgia syndrome”).)

Pernicious Anemia: As noted above, Mrs. Tinlin alleges that she at future risk of cardiac arrhythmias and cardiac failure, as well as “constant shortness of breath.” Again, this prognosis and symptom can also be explained by her long-standing pernicious anemia. The U.S. Department of Health and Human Services, National Heart, Lung, and Blood Institute explains that pernicious anemia is a condition in which the body cannot make enough red blood cells, which can lead to arrhythmias, heart failure, and shortness of breath. (NIH, *Pernicious Anemia*, at <https://www.nhlbi.nih.gov/health-topics/pernicious-anemia>.) Mrs. Tinlin has had anemia since at least as early as May 2010, and is noted in her records as recently as 2017. (Ex. B, Med. Recs., TINLIND_AMGWC_MDR00009-10, May, 29, 2010; TINLIND_ABCG_MDR00783-85, Jan. 19, 2017.) Thus, Mrs. Tinlin’s long-standing anemia is relevant to her alleged future damages of cardiac disease/failure, as well as alleged shortness of breath.

Thus, each of the previously medical conditions carry symptoms that overlap with her damages claims, and are relevant for the jury to consider in determining the extent to which Mrs. Tinlin’s claimed damages should be attributed to the Recovery Filter.

1 RESPECTFULLY SUBMITTED this 12th day of April, 2019.

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